IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 177 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

M/S.GUJARAT SHIP TRADING CORPN

Appearance:

1. INCOME TAX REFERENCE No. 177 of 1992
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the Revenue, the following questions are referred for our opinion, in respect of the assessment year 1985-86:

"1. Whether, the appellate Tribunal is right in law and on facts in confirming the order made by the CIT(A) whereby he had deleted an amount of Rs.5,443/- which was added by the ITO invoking the provisions of sec.43B in respect of the unpaid sales tax liability?

2. Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the CIT (A) wherein he had held that the activities of the assessee amounted in industrial undertaking and thereby directing the ITO to grant deductions u/s. 80HH and 80I of the I.T.Act, 1961?"

2. We have heard Mrs. Mona Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent assessee.

3. So far as question No.1 is concerned, our attention is drawn to the decision of the Apex Court in Allied Motors (P) Ltd., v. Commissioner of Income-Tax, 224 ITR 677, in which the Apex Court has held that proviso to section 43-B was inserted in the Income-Tax Act, 1961 by Finance Act of 1987 with effect from 1.4.1984 and insertion of Explanation 2 has been done by Finance Act of 1989 with effect from 1.4.1984 but both the amendments are applicable to the entire period from 1.4.1984. Therefore, the assessee who had collected sales tax in the previous accounting year and deposited the same in Treasury within the statutory period in the next accounting year will be entitled to claim deduction under Section 43-B (a) of the Income Tax Act, 1961. There is no dispute about the fact that in the instant case sales tax of Rs.5,443/- was paid on 9.7.1984 and was within the time allowed for such payment. Accordingly, the ratio of the above judgment would apply to the instant case. Accordingly we answer question No.1 in the affirmative i.e., in favour of the assessee and against the revenue.

4. Coming to the second question, our attention is drawn to the decision of another Division Bench of this Court in Commissioner of Income-Tax v. Vijay Ship

Breaking Corporation, (2003) 261 ITR 113, taking the view that ship breaking activity was not an activity of manufacture or production of any article or thing for the purposes of availing of the benefit of deductions under sections 80HH and 80-I of the Income-Tax Act, 1961. Following the ratio of the aforesaid decision, we answer the question in the negative i.e., in favour of the Revenue and against the assessee.

5. The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)